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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2012-0347; FRL- 9813-3]

Approval and Promulgation of State Implementation Plans; State of Montana; Interstate Transport of Pollution for the 2006 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove portions of a State Implementation Plan (SIP) submission from the State of Montana that are intended to demonstrate that its SIP meets certain interstate transport requirements of the Clean Air Act (“Act” or “CAA”) for the 2006 fine particulate matter (“PM_{2.5}”) National Ambient Air Quality Standards (“NAAQS”). This submission addresses the requirement that Montana's SIP contain adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. Specifically, EPA is proposing to partially approve and partially disapprove the portion of the Montana SIP submission that addresses the CAA requirement prohibiting emissions from Montana sources from significantly contributing to nonattainment of the 2006 PM_{2.5} NAAQS in any other state or interfering with maintenance of the 2006 PM_{2.5} NAAQS by any other state. EPA is also proposing to partially approve and partially disapprove the portion of Montana’s submission that addresses the CAA requirement that SIPs contain provisions to insure compliance with specific other CAA requirements relating to interstate and international pollution abatement. The partial disapprovals, if finalized, would not trigger an obligation for EPA to promulgate a Federal Implementation Plan (FIP) to address these interstate

transport requirements as EPA is determining that the existing SIP is adequate to meet the specific CAA requirements.

DATES: Comments must be received on or before [Insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2012-0347, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
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- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

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Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the

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FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials CAIR mean or refer to the Clean Air Interstate Rule
- (iii) The initials CSAPR mean or refer to the Cross-State Air Pollution Rule
- (iv) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (v) The initials SIP mean or refer to State Implementation Plan.
- (vi) The initials MDEQ mean or refer to the Montana Department of Environmental Quality.
- (vii) The words Montana and State mean the State of Montana.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.
2. *Tips for Preparing Your Comments.* When submitting comments, remember to:
 - a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).

- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. 2006 PM_{2.5} NAAQS and Interstate Transport

Section 110(a)(2)(D)(i) of the CAA identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this action for the state of Montana, EPA is addressing the first two elements of section 110(a)(2)(D)(i) with respect to the 2006 PM_{2.5} NAAQS.¹ The first element of section 110(a)(2)(D)(i) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly

¹ This proposed action does not address the two elements of the transport SIP provision (in CAA section 110(a)(2)(D)(i)(II)) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. We will act on these elements in a separate rulemaking.

to nonattainment” of the NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity in the state from emitting pollutants that will “interfere with maintenance” of the applicable NAAQS in any other state.

EPA is also addressing the requirements of section 110(a)(2)(D)(ii) with respect to the 2006 PM_{2.5} NAAQS. Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions to insure compliance with the applicable requirements of sections 126 and 115 of the Act. Section 126 pertains to notification to nearby states and petitions from states to EPA regarding interstate transport of pollution. Section 115 pertains to international transport of pollution.

B. EPA Rules Addressing Interstate Transport for the 2006 PM_{2.5} NAAQS in the Eastern United States

EPA has addressed the requirements of section 110(a)(2)(D)(i)(I) for many states in the eastern portion of the country in three regulatory actions.² Most recently, EPA published the final Cross State Air Pollution Rule (“CSAPR” or “Transport Rule”) to address the first two elements of CAA section 110(a)(2)(D)(i)(I) in the Eastern United States with respect to the 2006 PM_{2.5} NAAQS, the 1997 PM_{2.5} NAAQS, and the 1997 8-hour ozone NAAQS (August 8, 2011, 76 FR 48208). CSAPR was intended to replace the earlier Clean Air Interstate Rule (CAIR) which was judicially remanded.³ *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). On August 21, 2012, a panel of the U.S. Court of Appeals for the D.C. Circuit issued a decision to vacate the CSAPR. *See EME Homer City Generation, L.P. v. E.P.A.*, 696 F.3d 7 (D.C. Cir.

² *See* NO_x SIP Call, 63 FR 57371 (October 27, 1998); CAIR, 70 FR 25172 (May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

³ CAIR addressed the 1997 annual and 24-hour PM_{2.5} NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour PM_{2.5} NAAQS.

2012). The *EME Homer City* panel also ordered EPA to continue implementing CAIR in the interim. On March 29, 2013, the United States asked the Supreme Court to review the *EME Homer City* decision. In the mean time, and unless the *EME Homer City* decision is reversed or otherwise modified, EPA intends to act in accordance with the panel opinion in *EME Homer City*.

It is important to note that Montana was not among the states covered by CAIR and CSAPR and was outside of the modeling domain used in the analysis for those rules. However, as explained in section IV of this proposal, our methodology and analysis for evaluating Montana's compliance with 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5} NAAQS is intended to be consistent with portions of the methodology in CSAPR that were not called into question in the D.C. Circuit's decision, in particular the methodology used to identify monitors in other states—called “receptors”—that are appropriate for assessing interstate transport.

C. EPA Guidance for SIP Submissions to Address Interstate Transport for the 2006 PM_{2.5} NAAQS

On September 25, 2009, EPA issued a guidance memorandum that provides recommendations to states for making SIP submissions to meet the requirements of CAA section 110(a)(2)(D)(i) for the 2006 PM_{2.5} standards (“2006 PM_{2.5} NAAQS Infrastructure Guidance” or “Guidance”).⁴ With respect to the requirement in section 110(a)(2)(D)(i)(I) to prohibit emissions that would contribute significantly to nonattainment of the NAAQS in any other state, the 2006 PM_{2.5} NAAQS Infrastructure Guidance essentially reiterated the recommendations for western

⁴ See Memorandum from William T. Harnett entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),” September 25, 2009, available at http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.

states made by EPA in previous guidance addressing the 110(a)(2)(D)(i) requirements for the 1997 8-hour Ozone and 1997 PM_{2.5} NAAQS.⁵ The 2006 PM_{2.5} NAAQS Infrastructure Guidance advised states outside of the CAIR region to include in their section 110(a)(2)(D)(i)(I) SIP submissions an adequate technical analysis to support their conclusions regarding interstate pollution transport, *e.g.*, information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient pollutant concentrations in the state and in potentially impacted states, distances to the nearest areas not attaining the NAAQS in other states, and air quality modeling.⁶ With respect to the requirement in section 110(a)(2)(D)(i)(I) to prohibit emissions that would interfere with maintenance of the NAAQS by any other state, the Guidance stated that SIP submissions must address this independent and distinct requirement of the statute and provide technical information appropriate to support the State's conclusions, such as information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient concentrations in the state and in potentially impacted states, and air quality modeling.

In assessing interstate transport of emissions from Montana, EPA continues to consider relevant the types of information that were suggested in the 2006 PM_{2.5} NAAQS Infrastructure Guidance. Such information may include, but is not limited to, the amount of emissions in the state relevant to the NAAQS in question, the meteorological conditions in the area, the distance

⁵ See Memorandum from William T. Harnett entitled "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour ozone and PM_{2.5} National Ambient Air Quality Standards," August 15, 2006, available at http://www.epa.gov/ttn/caaa/t1/memoranda/section110a2di_sip_guidance.pdf.

⁶ The 2006 PM_{2.5} NAAQS Infrastructure Guidance stated that EPA was working on a new rule to replace CAIR that would address issues raised by the court in the *North Carolina* case and that would provide guidance to states in addressing the requirements related to interstate transport in CAA section 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5} NAAQS. It also noted that states could not rely on the CAIR rule for section 110(a)(2)(D)(i)(I) submissions for the 2006 24-hour PM_{2.5} NAAQS because the CAIR rule did not address this NAAQS. See 2006 PM_{2.5} NAAQS Infrastructure Guidance at 3.

from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider whether sources in the state may contribute significantly to nonattainment or interfere with maintenance of the 2006 PM_{2.5} NAAQS in other states. Modeling can be relied on when acceptable modeling technical analyses are available, but EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a specific situation.

III. Montana's Submittal

On February 10, 2010, the Montana Department of Environmental Quality (MDEQ) made a submission certifying that Montana's SIP is adequate to implement the 2006 PM_{2.5} NAAQS for all the "infrastructure" requirements of CAA section 110(a)(2). This submission included a brief transport analysis to support the conclusion that Montana's SIP meets the requirements of CAA section 110(a)(2)(D)(i)(I) for this NAAQS.⁷

Montana's PM_{2.5} transport analysis relies almost solely on EPA's decision not to model contribution from Montana to other states for the CAIR. We do not consider this adequate analysis, in large part because CAIR did not address the 2006 PM_{2.5} NAAQS.⁸ Moreover, as Montana was outside the modeling domains used in developing CAIR and CSAPR, EPA did not model the impact of emissions from Montana in the modeling done for either rule. EPA's decision in CAIR and CSAPR to focus on transport among states in the eastern and central portions of the U.S. did not constitute a determination that SIPs for states outside the modeling domain (e.g. those in the Western U.S.) were necessarily adequate to address interstate transport for the 1997 or 2006 PM_{2.5} NAAQS. As a result, western states such as Montana that were not

⁷ MDEQ's certification letter, dated February 10, 2010 is included in the docket for this action.

⁸ CAIR addressed the 1997 PM_{2.5} and 1997 ozone NAAQS.

included in the modeling domains for the CAIR and CSAPR rulemakings cannot rely on that modeling to demonstrate the adequacy of their transport SIPs. Such states, if they chose to submit transport SIPs for the 2006 PM_{2.5} NAAQS, must conduct a transport analysis that relies on relevant data and factors. MDEQ's submission contains no technical analysis of potential interstate transport or any other support for the State's conclusion that the existing Montana SIP satisfies the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS. MDEQ's submission also failed to address how Montana's SIP is adequate to meet the requirements of CAA section 110(a)(2)(D)(ii).

IV. EPA's Evaluation

To determine whether the CAA section 110(a)(2)(D)(i)(I) requirement is satisfied, EPA first determines whether a state's emissions contribute significantly to nonattainment or interfere with maintenance in downwind areas. If a state is determined not to have such contribution or interference, then section 110(a)(2)(D)(i)(I) does not require any changes to that state's SIP. If, however, the evaluation reveals that emissions from sources within the state do contribute significantly to nonattainment or interfere with maintenance in other states, then the state must adopt substantive provisions to eliminate those emissions. The state could achieve any required reductions through traditional command and control programs, or at its own election, through participation in a cap and trade program.

Consistent with the first step of EPA's approach in the 1998 NO_x SIP call, the 2005 CAIR, and the 2011 CSAPR, EPA is evaluating impacts of emissions from Montana with respect to specific monitors identified as having nonattainment and/or maintenance problems, which we refer to as "receptors." To evaluate these impacts, and in the absence of relevant modeling of Montana emissions, EPA is examining factors suggested by the 2006 Guidance such as

monitoring data, topography, and meteorology. EPA notes that no single piece of information is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together is used to evaluate significant contributions to nonattainment or interference with maintenance of the 2006 24-hour PM_{2.5} NAAQS in another state.

As noted above, Montana's February 10, 2010 transport analysis relies on factors irrelevant to the 2006 PM_{2.5} NAAQS, and lacks any technical analysis to support the State's conclusion with respect to interstate transport. For these reasons, we propose to partially disapprove the State's submission. However, we also propose to partially approve the submission based on EPA's supplemental evaluation of relevant technical information, which supports a finding that emissions from Montana do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in any other state and that the existing Montana SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS.

Our supplemental evaluation considers several factors, including identification of the monitors in other states that are appropriate "nonattainment receptors" or "maintenance receptors," consistent with EPA's approach in the CSAPR, and additional technical information to evaluate whether emissions from Montana contribute significantly to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS at these receptors.

Our Technical Support Document (TSD) contains a detailed evaluation and is available in the public docket for this rulemaking, which may be accessed online at <http://www.regulations.gov>, docket number EPA-R08-OAR-2012-0347. Below, we provide a summary of our analysis.

A. Identification of Nonattainment and Maintenance Receptors

EPA evaluated data from existing monitors over three overlapping 3-year periods (i.e., 2006-2008, 2007-2009, and 2008-2010) to determine which areas were violating the 2006 PM_{2.5} NAAQS and which areas might have difficulty maintaining the standard. If a monitoring site measured a violation of the 2006 PM_{2.5} NAAQS during the most recent 3-year period (2008-2010), then this monitor location was evaluated for purposes of the significant contribution to nonattainment element of section 110(a)(2)(D)(i)(I). If, on the other hand, a monitoring site shows attainment of the 2006 PM_{2.5} NAAQS during the most recent 3-year period (2008-2010) but a violation in at least one of the previous two 3-year periods (2006-2008 or 2007-2009), then this monitor location was evaluated for purposes of the interfere with maintenance element of the statute.

This approach is similar to that used in the modeling done during the development of CSAPR to identify the areas/receptors of concern when evaluating interstate transport. Nothing in the *EME Homer City* decision disturbs or undermines the validity of this approach to identifying receptors. However, as noted above, CSAPR did not model interstate transport of emissions from Montana to these receptors, so we consider other technical information to make our evaluation.

B. Evaluation of Significant Contribution to Nonattainment

EPA reviewed technical information to evaluate the potential for Montana emissions to contribute significantly to nonattainment of the 2006 PM_{2.5} NAAQS at specified monitoring sites in the Western U.S.⁹ EPA first identified as “nonattainment receptors” all monitoring sites in the

⁹ EPA also considered potential PM_{2.5} transport from Montana to the nearest nonattainment and maintenance receptors located in the eastern, midwestern and southern states covered by CSAPR and believes it is reasonable to conclude that, given the significant distance from Montana to the nearest such receptor (in Wisconsin) and the relatively insignificant amount of emissions from Montana that could potentially be transported such a distance, emissions from Montana sources do not significantly contribute to nonattainment or interfere with maintenance of

western states that had recorded PM_{2.5} design values above the level of the 2006 24-hour PM_{2.5} NAAQS (35 µg/m³) during the years 2008-2010.¹⁰ See Section III of our TSD for more a more detailed description of EPA's methodology for selection of nonattainment receptors.

Because geographic distance is a relevant factor in the assessment of potential pollution transport, EPA first reviewed information related to potential transport of PM_{2.5} pollution from Montana to the nonattainment receptors in states bordering Montana, both of which were in Idaho. As detailed in our TSD, the following factors support a finding that emissions from Montana do not significantly contribute to nonattainment of the 2006 24-hour PM_{2.5} NAAQS in Idaho: (1) technical information, such as data from monitors in the vicinity of the Idaho nonattainment receptors, indicating that elevated PM_{2.5} levels are predominantly caused by emissions from local sources; (2) topographical considerations such as intervening mountain ranges; and 3) meteorological considerations such as prevailing winds. While none of these factors by itself would necessarily show non-contribution, when taken together in a weight-of-evidence assessment they are sufficient for EPA to determine that emissions from Montana do not significantly contribute to nonattainment at the Idaho receptors.

EPA also evaluated potential PM_{2.5} transport to nonattainment receptors in the more distant western states of Oregon, Washington, Utah, Nevada, and California. The following factors support a finding that emissions from Montana do not significantly contribute to nonattainment of the 2006 24-hour PM_{2.5} NAAQS in any of these states: (1) the significant

the 2006 24-hour PM_{2.5} NAAQS at this location. These same factors also support a finding that emissions from Montana sources neither contribute significantly to nonattainment nor interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS at any location further east. *See* TSD at Section I.B.3.

¹⁰ Because CAIR did not cover states in the Western United States, these data are not significantly impacted by the remanded CAIR and thus could be considered in this analysis. In contrast, recent air quality data in the eastern, midwestern and southern states are significantly impacted by reductions associated with CAIR and because CSAPR was developed to replace CAIR, EPA could not consider reductions associated with the CAIR in the base case transport analysis for those states. *See* 76 FR at 48223-24.

distance from Montana to the nonattainment receptors in these states; (2) technical information, such as data from nearby monitors, indicating that elevated PM_{2.5} levels at nonattainment receptors in these states are predominantly caused by emissions from local sources; and (3) the presence of intervening mountain ranges, which tend to impede pollution transport.

Based on our evaluation, we propose to conclude that emissions of direct PM_{2.5} and PM_{2.5} precursors from sources in the State of Montana do not significantly contribute to nonattainment of the 2006 24-hour PM_{2.5} standards in any other state, that the existing SIP for the State of Montana is adequate to satisfy the “significant contribution” requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour PM_{2.5} standards, and that the State of Montana therefore does not need to adopt additional controls for purposes of implementing the “significant contribution” requirements of 110(a)(2)(D)(i)(I) with respect to that NAAQS at this time.

C. Evaluation of Interference with Maintenance

We also reviewed technical information to evaluate the potential for Montana emissions to interfere with maintenance of the 2006 24-hour PM_{2.5} standards at specified monitoring sites in the Western U.S. EPA first identified as “maintenance receptors” all monitoring sites in the western states that had recorded PM_{2.5} design values above the level of the 2006 24-hour PM_{2.5} NAAQS (35 µg/m³) during the 2006-2008 and/or 2007-2009 periods but below this standard during the 2008-2010 period. See section III of our TSD for more information regarding EPA’s methodology for selection of maintenance receptors. All of the maintenance receptors in the western states are located in California, Utah and Arizona. EPA therefore evaluated the potential for transport of Montana emissions to the maintenance receptors located in these states. As detailed in our TSD, the following factors support a finding that emissions from Montana do not

interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in those states: (1) technical information indicating that elevated PM_{2.5} levels at these maintenance receptors are predominantly caused by local emission sources; and (2) the significant distance between Montana and these maintenance receptors.

Based on this evaluation, EPA proposes to conclude that emissions of direct PM_{2.5} and PM_{2.5} precursors from sources in the State of Montana do not interfere with maintenance of the 2006 24-hour PM_{2.5} standards in any other state, that the existing SIP for the State of Montana is adequate to satisfy the “interfere with maintenance” requirements of CAA section 110(a)(2)(D)(i)(I), and that the State of Montana therefore does not need to adopt additional controls for purposes of implementing the “interfere with maintenance” requirements of section 110(a)(2)(D)(i)(I) with respect to that NAAQS at this time.

D. Evaluation of Montana’s SIP with regard to CAA section 110(a)(2)(D)(ii)

As stated, MDEQ’s February 10, 2010 submission did not address the requirements of CAA section 110(a)(2)(D)(ii), which requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). Because the State did not address this element for the 2006 PM_{2.5} NAAQS, EPA proposes to partially disapprove this portion of Montana’s submission. However, we also propose to partially approve the submission based on our evaluation which finds that Montana’s existing SIP is sufficient to meet the requirements of 110(a)(2)(D)(ii).

Section 126(a) requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator regarding sources violating the “interstate transport” provisions of section

110(a)(2)(D)(i). Section 115 similarly pertains to international transport of air pollution.

As required by 40 CFR 51.166(q)(2)(iv), Montana's SIP-approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD.¹¹ This suffices to meet the notice requirement of section 126(a).

Montana has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements of 110(a)(2)(D)(ii) for the 2006 PM_{2.5} NAAQS.

V. Proposed Action

EPA is proposing to partially approve and partially disapprove the 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii) portions of Montana's February 10, 2010 submission. We propose to partially disapprove the 110(a)(2)(D)(i)(I) portion of the submission because it relies on irrelevant factors and lacks any technical analysis to support the State's conclusion with respect to interstate transport. However, we also propose to partially approve this portion of the submission based on EPA's supplemental evaluation of relevant technical information, which supports a finding that emissions from Montana do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in any other state and that the existing Montana SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS. We propose to conclude that any FIP obligation resulting from finalization of the partial disapproval would be satisfied by our determination that there is no deficiency in the SIP to correct. Finalization of this proposed disapproval also would not require any further action on Montana's part given EPA's conclusion that the SIP is adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS.

¹¹ See Administrative Rule of Montana ("ARM") 17.8.826(2)(d).

Similarly, EPA is proposing to partially disapprove the 110(a)(2)(D)(ii) portion of Montana's submission because it fails to address or discuss this CAA requirement. However, we propose to partially approve this portion of the submission based on the conclusion that the State's existing SIP is adequate to meet the requirements of CAA section 110(a)(2)(D)(ii) for the 2006 24-hour PM_{2.5} NAAQS. For similar reasons, the partial disapproval of the submission for the 110(a)(2)(D)(ii) requirement does not require any further action from Montana or create any additional FIP obligation for EPA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law

104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 2, 2013.

Howard M. Cantor,
Acting Regional Administrator,
Region 8.

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